

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,) 8:06CR123
)
vs.) ORDER
)
JAMAAL A. MC NEIL,)
)
Defendant.)

This matter is before the court on the motion by the government to continue trial of the above captioned matter (Filing No. 38). The government seeks to continue the trial of this matter scheduled for January 22, 2007, in order to obtain a more thorough mental evaluation of the defendant Jamaal A. McNeil (McNeil). The court held a scheduling conference in this matter on January 18, 2007. Representing the United States was Assistant U.S. Attorney Jennie Dugan-Hinrichs. Representing McNeil was Assistant Federal Public Defender Jeffrey L. Thomas. Since this was a scheduling conference, McNeil was not present.

McNeil filed a notice of insanity defense pursuant to Fed.R.Crim.P. 12.2 on November 11, 2006 (Filing No. 34). Following such filing, McNeil provided government's counsel with various material required under Fed.R.Crim.P. 16(b). However, the final report of McNeil's expert witness, Dr. Daniel Wilson, was received by the government on January 18, 2007. The government seeks to depose Dr. Wilson and also engage a local expert regarding McNeil's mental condition at the time of the offense. The government seeks a continuation of the trial in order to accomplish these matters.

First, the government is not entitled to depose Dr. Wilson as a discovery device. Dr. Wilson can be deposed solely under the auspices of Fed. R. Crim. P. 15 for the preservation of his testimony for trial if a requisite showing is made. Second, while the government's request to have McNeil examined by a government expert is somewhat dilatory, the interest of justice will require the examination take place and that there be sufficient time to accomplish the examination. Accordingly, the motion for a continuance

of the trial will be granted but to a limited degree so as to allow a reasonable amount of time for McNeil to be examined by the government's expert.

IT IS ORDERED:

1. The government's motion for a continuance of the trial of this matter (Filing No. 38) is granted. Trial of this matter is re-scheduled for **February 26, 2007**, before Chief Judge Joseph F. Bataillon and a jury. The ends of justice have been served by granting such motion and outweigh the interests of the public and the defendant in a speedy trial. The additional **time** arising as a result of the granting of the motion, i.e., the time between **January 18, 2007 and February 26, 2007**, shall be deemed **excludable** time in any computation of time under the requirement of the Speedy Trial Act for the reason that time is required to accomplish a mental examination of the defendant and to adequately prepare the case. The failure to grant additional time might result in a miscarriage of justice. 18 U.S.C. § 3161(h)(1)(A) & (h)(1)(a)(A) & (B)(I) & (iv).

2. McNeil shall submit to a mental examination to be conducted by the government's expert psychologist or psychiatrist to determine McNeils' mental condition at the time of the alleged offenses in accordance with 18 U.S.C. 4242(a).

DATED this 22nd day of January, 2007.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge